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ORIGIN L-03

INFO OCT-01 ARA-16 EUR-25 EA-11 IO-14 ISO-00 FRB-03 OMB-01

TAR-02 SP-03 SWF-02 AGR-20 AID-20 CIAE-00 COME-00

EB-11 INR-11 LAB-06 NSAE-00 OIC-04 RSC-01 SIL-01

STR-08 TRSE-00 CIEP-03 CEA-02 SS-20 NSC-07 PA-04

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P R 302238Z SEP 74

FM SECSTATE WASHDC

TO AMEMBASSY BONN PRIORITY

AMEMBASSY BRUSSELS

AMEMBASSY CANBERRA

AMEMBASSY COPENHAGEN

AMEMBASSY THE HAGUE

AMEMBASSY LONDON

AMEMBASSY OTTAWA

AMEMBASSY PARIS

AMEMBASSY ROME

AMEMBASSY TOKYO

INFO USMISSION EC BRUSSELS

AMEMBASSY MEXICO

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E.O. 11652: GDS

TAGS:EGEN, UNCTAD

SUBJECT: CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES

REF: A. US MISSION OECD PARIS 22159

B. GENEVA 5670

C. STATE 203809

1. THIS MESSAGE IS ADDRESSED TO MEMBERS OF UNCTAD GROUP B WHO ARE ALSO MEMBERS OF UNCTAD WORKING GROUP ON A CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES (WG). PURSUANT TO RECOMMENDATION OF UNCTAD TRADE AND DEVELOPMENT BOARD AFTER TERMINATION OF INFORMAL CONSULTATIONS ON CHARTER IN GENEVA EARLY THIS MONTH, FURTHER INFORMAL CONSULTATIONS AMONG WG AND OTHER "INTERESTED COUNTRIES" WILL RESUME IN NY OCT. 8 FOR TEN WORKING DAYS; RESULTS TO BE REPORTED BY WG CHAIRMAN (CASTANEDA, MEXICO) DIRECTLY TO 29TH GA TOGETHER WITH WG REPORT. GROUP B MEMBERS PLAN TO CAUCUS PRIOR TO AND DURING CONSULTATIONS. (WE USE TERM "GROUP B" HERE FOR CONVENIENCE, ALTHOUGH IT MAY BE DECIDED IN NY TO USE GA TERMINOLOGY "WEO".)

2. IN PREPARATION FOR NY CONSULTATIONS (AND FOR MEETING OF GROUP B MEMBERS IN NY OCT. 7), APPRECIATE EMBASSY MAKING FOLLOWING POINTS TO FONOFF.

3. ESSENTIALS OF USG ANALYSIS CHARTER SITUATION ARE AS FOLLOWS:

A. PROSPECTS OF COMPROMISE ON ART. 2 ISSUES OF TREATMENT OF FOREIGN INVESTMENT, MNCS AND NATIONALIZATION ARE NOT GOOD, SINCE HARDLINERS AMONG GROUP OF 77 SEEM STILL TO BE INSISTING ON SUBJECTING FOREIGN INVESTMENT TO UNFETTERED DISCRETION OF HOST STATE. FOR ITS PART, HOWEVER, USG MEANS, IN CONCERT WITH OTHER MEMBERS OF GROUP B, TO PRESS VIGOROUSLY FOR AN AGREEMENT WHICH IS SUPPORTIVE OF THE ESSENTIAL INTERESTS OF GROUP B COUNTRIES. USG APPROACH IS THAT WE SHOULD BE SUFFICIENTLY FLEXIBLE IN SEEKING SUCH AN AGREEMENT WHILE ENDEAVORING TO MAINTAIN THE MAXIMUM DEGREE OF GROUP B UNITY.

B. IN THE EVENT THAT AGREEMENT ON ART. 2 IS ACHIEVED,
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OTHER ISSUES WILL HOPEFULLY PROVE MANAGEABLE OR SUBJECT TO DELETION. WE WOULD HOPE THAT THEN GROUP D ("SOCIALIST" STATES) WILL FEEL CONSTRAINED TO ACCEDE TO BRILLANTES FORMULA ON MFN AND NON-DISCRIMINATION, WHICH WE UNDERSTAND THAT THE EC IS PREPARED TO ACCEPT AS AN ELEMENT OF A CHARTER WHICH IS SATISFACTORY AS A WHOLE. USG CANNOT ACCEPT PROVISIONS THAT SUPPORT ANY OF THE FOLLOWING PROPOSALS OF GROUP OF 77: PRODUCERS' ASSOCIATIONS, INDEX-

ATION (RELATIONSHIP OF PRICES OF EXPORTS FROM LDCS TO PRICES OF THEIR IMPORTS), AND RESTITUTION FOR RAVAGES OF COLONIALISM, OCCUPATION AND APARTHEID. ONLY PRACTICAL COURSE PROMISES TO BE DELETION OF ALL THREE OF THESE SUBJECTS. (WE UNDERSTAND THIS GENERALLY TO BE THE POSITION OF GROUP B COUNTRIES, AND WOULD APPRECIATE SPECIFIC VIEWS OF ADDRESSEE FONOFF.)

C. AS RECENT ADDRESSES BY PRESIDENT AND SECRETARY DEMONSTRATE, USG ATTACHES GREAT IMPORTANCE TO SUPPLY OF VITAL RAW MATERIALS, ESPECIALLY ENERGY, AT EQUITABLE PRICES. USG THUS WARMLY FAVORS A PROVISION SUCH AS EC SEEKS ON SECURITY OF SUPPLY OF RAW MATERIALS. IT ALSO CAN ACCEPT A PROVISION FOR STUDY OF UTILITY OF COMMODITY AGREEMENTS. BUT USG IS NOT WILLING TO PAY THE PRICE FOR INCLUSION OF THESE PROVISIONS OF ADDING TO CHARTER ANY OF THE G-77 PROPOSALS NOTED IN PRECEDING SUBPARA. THIS MESSAGE. IN ANY EVENT, G-77 HAS MANIFESTED ITS STRONG OPPOSITION TO THE INCLUSION OF THE SORT OF PROVISION ON SECURITY OF SUPPLY THAT WOULD MEET EC DESIRES.

D. AS OECD MEMBERS WERE INFORMED IN CONSULTATIONS DESCRIBED REFTEL (A), IF GROUP OF 77 IS UNWILLING TO CONTINUE NEGOTIATIONS THROUGH ADDITIONAL MEETING OF WG FOLLOWING 29TH SESSION OF UNGA, AND PUTS CHARTER TO THIS SESSION OF UNGA FOR ADOPTION, USG INTENTION IS TO VOTE AGAINST A CHARTER THAT RUNS SERIOUSLY COUNTER TO USG INTERESTS. IT EARNESTLY HOPES AND STRONGLY RECOMMENDS

THAT OTHER MEMBERS OF GROUP B JOIN USG IN A NEGATIVE VOTE. OUR CONSIDERED JUDGMENT IS THAT ONLY A NEGATIVE VOTE ON CHARTER AS A WHOLE IS SUFFICIENT TO PROTECT INTERESTS OF DEVELOPED MARKET-ECONOMY STATES IN THIS CASE. NEITHER A CONFIDENTIAL

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NEGATIVE VOTE ON OFFENDING PARA. OR PARAS., COUPLED WITH ABSTENTION ON THE CHARTER AS A WHOLE, NOR STILL LESS A POSITIVE VOTE COUPLED WITH STATEMENTS OF RESERVATION, WILL SUFFICE TO PREVENT THE CHARTER FROM BEING CITED, AND EVEN BECOMING, UN HOLY WRIT. LIKE THE DECLARATIONS ON COLONIALISM AND NON-INTERVENTION, WHICH WEST FAILED TO VOTE AGAINST, THE CHARTER WOULD THREATEN SOON TO ASSUME THE STATUS OF PRINCIPLES GOVERNING INTERNATIONAL ECONOMIC RELATIONS, IF NOT OF INTERNATIONAL LAW, UNLESS IT IS DEPRECIATED FROM THE OUTSET BY NEGATIVE VOTES.

E. USG TRUSTS OTHER GROUP B MEMBERS WILL GIVE MOST CAREFUL CONSIDERATION TO VIEW SET OUT PRECEDING SUBPARA. THIS MESSAGE AND HOPES THAT THEIR REPRESENTATIVES AT NY CONSULTATIONS OCT. 7 WILL BE ABLE TO DISCUSS THEIR VOTING

INSTRUCTIONS IN CASE CHARTER SHOULD COME TO VOTE IN UNGA THIS SESSION.

F. FOR PARIS, BONN AND TOKYO ONLY. ON ISSUES OF ART. 2, AND ESPECIALLY PROBLEM OF WHETHER ACTS OF A STATE IN NATIONALIZING FOREIGN PROPERTY AND REGULATING MNCS MUST EXPRESSLY BE SUBJECT TO PERFORMANCE OF ITS OBLIGATIONS UNDER "INTERNATIONAL LAW", FRANCE, FRG AND JAPAN APPARENTLY TAKE A MORE EXACTING VIEW THAN DOES USG. FOR ITS PART, USG DOES NOT REQUIRE (THOUGH NATURALLY IT FAVORS) AN EXPRESS REFERENCE TO "INTERNATIONAL LAW" BECAUSE, HOWEVER MERITED, IT IS NOT NEGOTIABLE IN THIS CONTEXT. IN ACCORDANCE WITH THE POSITION ADVANCED AD REFERENDUM BY GROUP B REPRESENTATIVES IN RECENT GENEVA CONSULTATIONS, USG IS PREPARED TO ACCEPT AN APPROPRIATE, ESSENTIALLY EQUIVALENT REFERENCE TO "INTERNATIONAL LAW," SUCH AS "INTERNATIONAL OBLIGATIONS". IN VIEW OF USG, IT WOULD APPEAR TO BE A CONTRADICTORY POLICY IF FRG, FRANCE AND JAPAN WERE TO REQUIRE AN EXPRESS REFERENCE TO INTERNATIONAL LAW BUT, IN THE ABSENCE OF IT OR EVEN AN ESSENTIALLY EQUIVALENT PROVISION, WOULD NEVERTHELESS FAIL TO VOTE AGAINST SUCH A DEFICIENT CHARTER. FRG, FRANCE AND JAPAN WILL APPRECIATE THAT USG DOES NOT WISH TO BE PLACED IN A POSITION OF VOTING AGAINST THE CHARTER, WHEN, BUT FOR THEIR VIEWS ON ART. 2, IT MIGHT BE POSSIBLE (NOT PROBABLE BUT JUST POSSIBLE) TO REACH AGREEMENT ON ART. 2 AND THE
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CHARTER WITH THE G-77 -- AND TO FIND THAT, AT SAME TIME, WHILE FRG, FRANCE AND JAPAN HAVE HELD TO A HARDER LINE,

THEY FAIL TO VOTE NEGATIVELY. USG EQUALLY HOPES THAT FRG, FRANCE AND JAPAN WILL STAND WITH IT IN UNYIELDING OPPOSITION TO INCORPORATION OF PROVISIONS ON PRODUCERS' ASSOCIATIONS, INDEXATION AND RESTITUTION FOR COLONIALISM, OCCUPATION, ETC. INGERSOLL

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